IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1517 of 1983

For Approval and Signature:

HON'BLE MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANILKUMAR DADURAO DHEKLA

Versus

RUKHIBEN WD/O M I VALAND

Appearance:

MR AJ PATEL for the Petitioner.

MR NK MAJMUDAR for the Respondents.

CORAM : HON'BLE MR.JUSTICE KUNDAN SINGH

Date of decision: 16/10/2003

ORAL JUDGEMENT

This Revision Application arises out of the judgment and order dated 30th July, 1983 passed by the 2nd Extra Assistant Judge, Vadodara whereby Civil Appeal No. 227 of 1981 was allowed and the judgment and

decree dated 13.4.1981 in Rent Suit no.499 of 1978 passed by the Judge, Small Cause Court, Vadodara has been set side.

2. The petitioner-plaintiff filed Rent suit no. 499 of 1978 against the original tenant Manilal Ishwarlal Valand who died subsequently during the pendency of the suit on 26th November, 1974. The heirs and legal representatives of the tenant contested the suit. The suit was filed for possession of the suit premises on the ground that the tenant was in arrears of rent for more than six months and the original tenant had sub-let the suit premises to the defendant no. 2 Somabhai Dahyabhai Valand. It is stated that the notice dated 10.5.1976 was served upon the tenant for possession of the suit premises. It is also stated that the suit premises was rented to Manilal Ishwarlal Valand-original statutory tenant on monthly rent of Rs. 30/- and other charges etc. The defendant was not paying the rent regularly. Therefore, he was in arrears of rent from 6.7.1974 to 5.5.1976 amounting to Rs. 660/-. It is stated that the original tenant alone was doing the work of hair cutting in the suit shop. After the death of the original tenant, none of the heirs had got any right to continue possession of the suit premises. After the death of the original tenant, his heirs have sub-let the suit shop to defendant no. 2 Somabhai Valand. The deceased tenant had not replied the notice served to him, but he filed his written statement to the suit at exh. 9 in which he denied the allegations made in the suit notice. It was also denied that the property was let to him on monthly rent rent of Rs.30/-. Whatever rent is due, that was due to fault of the plaintiff himself. No cause of action for recovery of possession on the ground of non-payment of arrears of rent had arisen. However, he requested the plaintiff to accept the rent according to standard rent. He also required the tax bills for the payment, but the plaintiff had not delivered any tax bills. Hence, he could not pay increases in tax etc. He is always ready and willing to pay the standard rent and permitted increases. The notice is illegal and no cause of action for the suit has arisen. After the death of the original tenant, additional written statement was filed at exh. 21 by the heirs of the deceased tenant and they have admitted that the property was let out to their father, but it was denied that it was on monthly rent of Rs.13/-. The defendant no. 1/3 was doing the business of hair cutting with his father when he was alive and he is still doing the same business in the suit shop. It was also denied that the suit premises was sub-let to Somabhai Valand.

3. The trial court, after recording evidence and after considering the material on record and after hearing the learned advocates for the parties, decreed the plaintiff's suit for arrears of rent to the tune of Rs. 1080/- from 6.9.1975 to 6.9.1978 with costs and for possession of the suit property. The defendants were directed to hand over vacant possession of the suit premises to the plaintiff on or before 31st July, 1981 holding that the defendants are liable to pay Rs.30/- per month as mesne profit from 6.9.1978 till possession is handed over to the plaintiff. The standard rent was also fixed at RS.30/- per month inclusive of all taxes, electricity charges. The amount deposited by the defendants was directed to be adjusted.

4. Being aggrieved by the judgment and decree of the trial court, the heirs of the original tenant preferred Civil Appeal No. 227 of 1981 in the District Court, Vadodara. The 2nd Extra Assistant Judge, Vadodara, by his judgment and order dated 30th July, 1983 set aside the judgment and decree passed by the trial court. Therefore, the the petitioner-original plaintiff has filed the present Civil Revision Application.

5. Heard the learned counsel for the parties at length. I have also gone through the material and evidence on record and relevant papers. The learned counsel for the petitioner submitted that in the present case, the lower appellate court has misappreciated the evidence on record and has committed a manifest error on the face of the record in reversing the findings recorded by the trial court which are based on the evidence on record. If the findings recorded by the trial court are not perverse, the lower appellate court has no jurisdiction to reverse those findings. All findings have been recorded by the trial court on the basis of the material and evidence on record of both the parties. The lower appellate court was not justified in reversing the findings arrived at by the trial court.

6. The learned counsel for the petitioner contended that the lower appellate court has committed an error in arriving at a conclusion that the case falls under section 13(3)(b) of the Rent Act. In fact, the case falls under the provisions of section 12(3)(a) of the Rent Act. The trial court was perfectly justified in arriving at the conclusion that the plaintiff has not claimed permitted increases. The only amount of arrears of rent was required by the petitioner that was due. So, the case is covered by the provisions of section 12(3)(a)

of the Rent Act and not by the provisions of section 12(3)(b) of the Rent Act.

7. I have considered the arguments and gone through the papers on record on connection with the contentions raised by the learned counsel for the petitioner. In the present case, it is true that the original tenant has not raised the question regarding standard rent within a period of 30 days from the date of the notice and that dispute regarding standard rent has been raised in the written statement. But the observation of the lower appellate court is that the deceased tenant was in arrears of rent from 6.7.74 to 5.7.1976. When the suit notice was served upon the deceased tenant, he was in arrears of rent for more than six months. In the notice exh. 31, the plaintiff has demanded other local taxes. Now, he says that he has not claimed any local tax in the plaint in order to take out the case from the provisions of section 12(3)(b) of the Rent Act. Though in the plaint, he has stated that the deceased defendant was liable to pay electricity charges, but in the notice exh. 31, it is stated that the defendant was liable to pay permitted increases. It must mean that the rent was payable at the end of every year. The case of the plaintiff was covered under section 12(3)(b) of the Rent Act.

8. The trial court has not taken into account the assertions made in the notice, but recorded erroneous findings that the case of the deceased tenant was covered under section12(3)(a) of the Rent Act.As such, if the case is covered under clause (b) of section 12(3) of the Bombay Rent Act, then the trial court's finding would be illegal and not maintainable in law. I have gone through the notice exh. 31 from the record and proceedings of this case wherein it is mentioned that the defendant was also liable to pay permitted increases i.e. taxes etc. alongwith arrears of rent. If such demand is made in the notice then the case would fall within the purview of section 12(3)(b) of the Rent Act. Obviously, the trial court has committed an error in this respect and the lower appellate court is fully justified in holding that the case falls under clause (b) of section 12(3) of the Bombay Rent Act.

9. So far as arrears of rent are concerned, the lower appellate court has held that the defendant was in arrears of rent amounting to Rs.650/- from 5.7.76 to 6.7.74. The lower appellate court has scrutinised the pursises which are on record of the trial court. The defendant filed pursis at exh.59 in order to show that on

5.1.1979, an amount of Rs.1000/- was deposited. They further deposited more than due amount. They also deposited Rs.2500/-. As per the pursis, they have also deposited an amount of Rs. 3400/-. Last deposit was made on 13.6.1986 for Rs.30/-. The total amount comes to Rs. 3240/- from 6.7.74 to 5.7.83. The finding recorded by the lower appellate court is that the defendants have complied with the provisions of section 12(3)(b) of the Rent Act and they have already deposited all amount due on the first day of hearing of the suit. The learned counsel for the petitioner could not point out that anything more was due on the first day of hearing of the suit. Hence, I do not find any wrong in the finding recorded by the lower appellate court that the respondents have already complied with the provisions of section 12(3)(b) of the Rent Act. The findings recorded by the trial court in this respect are contrary and are not sustainable. Therefore, the lower appellate court was fully justified in holding that the case is covered by the provisions of section 12(3)(b) of the Act.

10. The next question which has been canvassed by the learned counsel for the petitioner is that the respondent nos.1/1 to 1/3 are not the statutory tenants of the suit premises, on the basis of the finding that one of the heirs of the deceased tenant was working in Alembic Glass Works in Vadodara, while other brother was doing his business in another shop and admittedly, the widow of the deceased tenant was not doing any business in the suit premises. The lower appellate court on the basis of the Supreme Court decision in the case of Damadilal and others vs. Parashram and others reported in 1976(4) SCC, 855 and the decision of this Court in the case of Babubhai @ Jayantilal Kalyanbhai and others vs.Shah Bharatkumar Ratilal and others reported in 21, GLR, 103 came to the conclusion that the defendant nos.1/1 to 1/3 are the tenants and the trial court has committed an error in holding otherwise. The next contention of the learned counsel for the petitioner is that the trial court has held that the defendants are not tenants on the basis of the evidence on record. As one of the heirs of the tenant was working in Alembic Glass Works Ltd., while other brother was doing his business of hair cutting in another shop. In this respect, I have gone through the depositions of witnesses. Fortunately, these depositions have been recorded in English. The plaintiff Anilkumar Dhokle has deposed that the original tenant was irregular in payment of rent. In that respect, he also proved certain documents on record. He stated that the property is situated on the main road. The rent of any room is not less than Rs. 30/- per month

in the locality. The original tenant-Manilal died during the pendency of the suit leaving behind him two sons Dahyabhai and Bhogilal. Bhogilal has got Hari Cut Shop on Ajwa road, opposite Navjivan society, independently since last 2.1/2 years, while Dahyabhai is serving in Alembic since last 10-12 years when the original tenant was alive. During the lifetime none of them has worked or helped the original tenant Manilal. While, the wife of the original tenant is doing domestic work. The defendant no. 2 is the sub-tenant after the death of Manilal. He is not a worker of the defendant. There was only one seat for barber in the suit premises. Now, it has two chairs to employer other workers also. Manilal's sons never worked with Manilal in his lifetime. Even till today, they never worked with him. Certain photographs were taken by Shripal, another witness in order to show that nobody was working in the suit premises except defendant no. 2. One of the defendants was doing the business independently. It is admitted in his cross-examination that he told his advocate that Bhogilal has a separate saloon, but it is not mentioned in the plaint that Bhogilal has a separate saloon. He has denied the fact that the defendant no. 2 was a worker of other defendant, but he was a sub-tenant.

11. The other witness is Rameshchandra who has stated that the defendant Dahyabhai is serving in the factory of Alembic Glass since 1963 continuously. Dahyabhai entered the witness box in which he has stated that his father died on 26th November, 1979 when he was alive. His brothers worked with their father. He also worked with them after coming from service of Alembic Glass works. After the death of his father, he and his brother are doing the work in the shop. It was incorrect that Somabhai is a sub-tenant of the shop. But it is admitted that at present, on the date of the deposition i.e 15.10.80, Somabhai works on 50% basis for the last eight months as a worker. When he was working in the suit premises, Dahyabhai had possession of the shop. It is also incorrect to say that Bhogilal did not work in the shop and he has kept other shop in Navjivan society. He also stated that he has deposited all the arrears of rent in the court. No doubt, it is admitted by this witness that defendant no. 2 used to pay half of the income. The heirs of the deceased tenant took away the remaining half income though all the implements in the suit shop were of the tenant and not of the defendant no.2. It is incorrect to say that the defendant no.2 paid 50% income as rent for the shop which were being used by him. The trial court has recorded a finding that either it was a partnership or was a sub-letting and for

all practical purposes, it was nothing but sub-letting and the defendants have not examined any witness from the locality to say that the defendant no. 2 was a sub-tenant, but was a worker. Sub-tenancy was secret and there was no evidence of actual payment of rent. The presence of a stranger gives a presumption that he is a sub-tenant with consideration. So Somabhai being a stranger, it was the duty of the tenant to show that he was not a sub-tenant. As such, the defendants are liable to be evicted on the ground of sub-letting. In this respect, the lower appellate court has come to the conclusion that photographs were taken by the witness when both the heirs of the defendant tenant were not present in the shop and it cannot be said that Dahyabhai-tenant cannot work in the Hair cutting saloon after working hours of the factory. For this purpose, the plaintiff is required to prove that exclusive possession has been transferred to the sub-tenant in order to prove sub-tenancy. After going through the material on record, it appears that it has not been proved by the plaintiff that exclusive possession had been transferred to the defendant no.2 by the heirs of the deceased tenant. By mere presence of the defendant no. 2 in the suit premises, it cannot be safely inferred that he was exclusively in possession of the suit premises and the other defendants had transferred or assigned or unlawfully sub-let the premises to the defendant no. 2, more particularly when the defendant no.1/2 Dahyabhai has stated in his deposition that he is also doing the said work of hair cutting. He can also do the said work on holidays and during spare time. When there is no evidence on record to show that he cannot do so in view of the contract of service in Alembic Glass. As such, the findings recorded by the lower appellate court on the basis of the re-appreciation of evidence on record cannot be re-appreciated by this court in order to arrive at another finding in the revisional jurisdiction under section 29 of the Bombay Rent Act. On the basis of the material and evidence on record, the findings recorded by the lower appellate court do not appear to be perverse or unreasonable. Therefore, this Court cannot interfere with such findings based on the evidence on record. Even this Court cannot examine sufficiency of evidence in this respect when any finding has been recorded by the lower appellate court after re-appreciation of evidence and this Court cannot again re-appreciate the same in exercise of revisional jurisdiction under section 29 of the Bombay Rent Act.

12. Considering the entire facts and circumstances of the case, I do not find any good reason

calling for interference by this Court, more particularly when the findings recorded by the lower appellate court are based on evidence on record. Accordingly, this Revision Application is dismissed. Rule is dischaged.

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